

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

	FILED: MAY 20, 2008
PATRICK ECKER,	08CV2913 TG
)
	JUDGE GRADY
Plaintiff,)
	MAGISTRATE JUDGE DENLOW
)
vs.)
	Case No. 07-C-0371
WISCONSIN CENTRAL LTD.,)
a corporation,)
	Pending in the Eastern District of Wisconsin
Defendant.)

**DEFENDANT WISCONSIN CENTRAL, LTD.'S PETITION
FOR AN ORDER COMPELLING THE KEEPER OF RECORDS AT HOEY & FARINA
TO DISCLOSE RECORDS IN RESPONSE TO SUBPOENA**

Defendant Wisconsin Central Ltd. ("WCL"), by its attorneys and pursuant to Fed.R.Civ.P. 37, petition the Court to enter an Order compelling the keeper of records at Hoey & Farina to disclose records in response to a subpoena served on March 24, 2008. As support for this Motion, WCL attaches hereto the Affidavit of James A. Fletcher and states as follows:

1. The action, brought by plaintiff in the Eastern District of Wisconsin pursuant to the Federal Employers' Liability Act, 45 U.S.C. §§ 51 et seq., arises out of an accident that occurred on June 21, 2005 in Wausau, Wisconsin. The plaintiff, an employee of WCL, claims to have been injured while working as a conductor in a WCL rail yard in Wausau.
2. Plaintiff has disclosed the following expert witnesses in the action pursuant to Rule 26(a)(2): Terry L. Cordray, M.S., CCM, ABVE, LPC; Malcom Cohen, Ph.D.; and Raymond A. Duffany. Mr. Cordray is a vocation rehabilitation counselor; Mr. Cohen is an economist; and Mr. Duffany is a civil engineer.

3. Plaintiff is represented in this case by James L. Farina and his law firm, Hoey & Farina. Each of the three experts named by plaintiff in this case has been used as an expert witness in numerous prior cases by Hoey & Farina.

4. On March 24, 2008, WCL served a subpoena on the Keeper of Records at Hoey & Farina, requesting the following documents:

- (1) Documents sufficient to show the total of all amounts paid by you (or any attorney in your firm) or by or on behalf of your clients to each of the experts for each year in the last five years (2003-2007), including, but not limited to all IRS Form 1099's issued by your firm with respect to each expert.
- (2) For each of the experts, documents sufficient to show each lawsuit in connection with which your firm (or any attorney in your firm) has retained or utilized any services of the expert during the last five years (2003-2007).
- (3) Documents sufficient to show all amounts (a) billed to and (b) paid by your firm to each of the experts in connection with work done on this case.

See subpoena attached hereto as "Exhibit A".

5. On April 4, 2008, Mr. Farina filed a pleading titled "Objections by James L. Farina, Hoey & Farina, P.C. and Plaintiff Patrick Ecker to Defendant's Subpoena to Plaintiff's Attorney," which is attached hereto as "Exhibit B". In the pleading Mr. Farina objects to the subpoena on the basis that he is plaintiff's attorney and that it is inappropriate for WCL to serve a subpoena on the Keeper of Records for his firm.

6. After a phone conference on Friday, May 16, 2008 at 5:46 p.m. in which counsel for WCL, Kristin M. Liddle spoke to James L. Farina in a good faith attempt to resolve differences, the parties were unable to reach an accord. Pursuant to LR37.2 an affidavit signed by Kristin M. Liddle is attached hereto as "Exhibit C".

7. The documents requested in the subpoena issued to the Keeper of Records are those which would show the amount of money that Hoey & Farina has paid to the disclosed experts in connection with prior cases; the amount of money that has been paid to the experts in this case; and the names of the prior cases where Hoey & Farina has used these individuals as experts.

8. The subpoena does not make Mr. Farina a witness, as claimed in the Objections - it seeks documents for Hoey & Farina, nor does the subpoena request information that is protected by the attorney-client or work product privilege. WCL is merely requesting documents that expand on what is already discoverable information under Rule 26(a)(2), which requires that when an expert is disclosed, certain information regarding cases that an expert has testified and the expert's compensation be provided.

9. The Seventh Circuit has not weighed in on whether a plaintiff's attorney or his law firm may be subpoenaed for documents evidencing usage of certain experts. However, courts *have* recognized that an attorney may be subpoenaed for deposition, even if he or she represents a party to the litigation in issue. *Hunt Int'l Resources Corp. v. Binstein*, 98 F.R.D. 689, 690 (N.D. Ill. 1983); see also *Marco Island Partners v. Oak Development Corp.*, 117 F.R.D. 418 (N.D.Ill. 1987); *Advance Systems, Inc. v. APV Baker PMC, Inc.*, 124 F.R.D. 200, 201 (E.D.Wis.1989). Numerous district courts within the Seventh Circuit have followed the approach outlined in *Shelton v. American Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986).¹ See e.g., *Newell v. Wisconsin Teamsters Joint Council No. 39*, 2007 WL 2874938 (E.D.Wis. 2007)(Not reported in F.Supp.2d). The court in *Shelton* addressed situations during which it is

¹ See *Stalling v. Union Pac. R.R. Co.*, 2004 U.S. Dist. LEXIS (N.D.Ill. 2001); *Prevue Pet Products v. Avian Adventures, Inc.*, 200 F.R.D. 413, 418-19 (N.D. Ill. 2001); *Hernandez v. Longini*, 1997 U.S. dist. LEXIS 18679 (N.D. Ill. 1997); *M&R Amusements Corp. v. Blair*, 142 F.R.D. 304 (N.D.Ill. 1992); *Harriston v. Chicago Tribune Co.*, 134 F.R.D. 232 N.D. Ill. 1990; *Joslyn Corp. v. RTE Corp.*, 1988 U.S. Dist. LEXIS 10796 (N.D.Ill. 1988).

appropriate to take opposing counsel's deposition. In this case WCL does not seek to take Mr. Farina's deposition. While WCL merely seeks to compel production of certain documents from Hoey & Farina, the case law pertaining to the subpoena for deposition of plaintiff's attorney is instructive. In *Shelton* the party seeking the deposition must show that (1) no other means exist to obtain the information than to depose counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case. *Shelton*, 805 F.2d at 1327.

10. The subpoena issued to the Keeper of Records did not request that Mr. Farina appear at deposition to testify as to amounts his firm paid to the disclosed experts. Instead, the Keeper of Records was merely asked to disclose the accounting records evidencing payments to the disclosed experts and the names of the cases in which those experts were used. The least intrusive means available has been used to obtain the requested information. Moreover, the information sought is not available from other sources. The disclosed experts have claimed not to have records that would provide the information requested.

11. The information sought is relevant and nonprivileged. The amount paid to an expert over time by an attorney is relevant because it goes to the credibility of the expert witness. If an attorney repeatedly uses the same experts the credibility of those experts is an issue. Counsel for WCL has personally been involved in a number of cases where Hoey & Farina has used these same experts. Based on experience, counsel believes that payments received from Hoey & Farina represent a significant percentage of each expert's income. Needless to say, to the extent that any of these experts relies on Hoey & Farina for a significant percentage of his income, his credibility in this case will be adversely affected. Further, the

records showing amounts paid by plaintiff's attorney to experts in this matter are not covered by the attorney-client or work product privilege.

12. The information regarding payments made to experts and cases in which experts were used is crucial to preparation of the case because it goes to the credibility of plaintiff's experts. "The importance of credibility of witnesses cannot be overstated, and this is especially true with respect to expert witnesses." *Behler v. Hanlon*, 199 F.R.D. 553, 556 (D.Md. 2001). An important method used to impeach credibility is impeachment by demonstration of bias, prejudice, interest in the litigation or motive to testify in a particular fashion. *Id* at 556-557. See also *United States v. Abel*, 469 U.S.45, 49-52 (1984) (permitting bias impeachment despite no rule of evidence specifically allowing it). "Since bias of a witness is always significant in assessing credibility, the trier of fact must sufficiently informed of the underlying relationships, circumstances, and influence operating on the witness to determine whether a modification of testimony reasonably could be expected as a probable human reaction." *Id.* at 556 citing Weinstein Treatise, § 607.04[1]. Examples of such relationships include business relationships and payment by a party such as that made to an expert witness. *Id.* The information requested in the subpoena served on the Keeper of Records will show the business relationship that plaintiff's counsel has with the expert witnesses. Because Hoey & Farina represents plaintiffs in FELA cases (and is doing so in this case), that relationship could affect the credibility of those experts and as such is discoverable evidence.

13. Finally, the information sought in the subpoena is readily available from Hoey & Farina's accounting records. Attached hereto as "Exhibit D" is a printout provided by Hoey & Farina to WCL's counsel in response to a subpoena in Mulrenin v. Chicago Rail Link, Case No. 05-L-014165, a case that is currently pending in Cook County.

WHEREFORE, WCL prays that the Court enter an Order compelling James L. Farina to disclose records in response to the subpoena dated March 21, 2008.

Dated: May 20, 2008

Respectfully submitted,

s/ James A. Fletcher
James A. Fletcher
Kristin M. Liddle
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, Illinois 60606-2832
Telephone: (312) 252-1500
Facsimile: (312) 252-2400
Attorneys for WISCONSIN CENTRAL LTD.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2008, I caused a true and correct copy of the **Defendant Wisconsin Central Ltd.'s Motion for an Order Compelling James L. Farina to Disclose Records in Response to Subpoena** to be served upon:

James A. Farina, Esq.
Hoey & Farina, P.C.
542 South Dearborn Street
Suite 200
Chicago, IL 60605
jfarina@hoeyfarina.com

Counsel for Plaintiff Patrick Ecker

s/ James A. Fletcher
James A. Fletcher

JUDGE GRADY

MAGISTRATE JUDGE DENLOW

AO 88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the

United States District Court
EASTERN DISTRICT OF ILLINOIS

PATRICK ECKER,

Plaintiff,

v.

WISCONSIN CENTRAL LTD.,
Defendant.

TO: Keeper of Records
 c/o James L. Farina
 Hoey & Farina
 542 South Dearborn Street, Suite 200
 Chicago, Illinois 60605

SUBPOENA IN A CIVIL CASE

CASE NUMBER:¹ 07-CV-371

Pending in the Eastern District of Wisconsin

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): All of the documents described on the attached Exhibit A within your possession, custody or control.

PLACE	DATE AND TIME
29 North Wacker Drive, Suite 920, Chicago, IL 60606	April 7, 2008 10:00 am.

YOU ARE COMMANDED to produce and permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

Issuing Officer Signature and Title (Indicate if attorney for Plaintiff or Defendant) Date March 21, 2008



Issuing Officer's Name, Address, and Phone Number

James A. Fletcher, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832 312/252-1500

EXHIBIT**A**

(See Rule 45, Federal Rules of Civil Procedure Parts C & D on Reverse)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

SERVED	DATE	PLACE
	<u>March 24, 2008</u>	<u>Hoey & Farina</u>
SERVED ON (PRINT NAME)	MANNER OF SERVICE	
<u>James L. Farina</u>	<u>Hand delivery</u>	
SERVED BY (PRINT NAME)	TITLE	
<u>by Graves</u>	<u>Mr</u>	

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 3-24-08

DATE

Henry Farina

SIGNATURE OF SERVER

Henry Farina

ADDRESS OF SERVER

Rule 45. Federal Rules of Civil Procedure, Parts C & D

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(2)(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection is made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, of commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and

shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Nov 27/2007

Hoey & Farina, P.C.
General Bank Journal

Page: 1

Date	Received From/Paid To	Entry #	Explanation	Matter	Client	ALL DATES			Allocated	Receipt	Entry Tot	Running Bal
						Acct#	Che/Rec#/Clr /Btch	G/L Acct				
Apr 30/2004	Cavanaugh & Associates, Inc.	3558	Swan - R	03-3084	SWAN, ROSALIE	2	16057	1085 Case Cost	375.00		375.00	-375.00
	Total for Apr 30/2004:			-375.00								
May 5/2004	Cavanaugh & Associates, Inc.	5889	BRIAN MCGOWAN 2556 - R	02-2904	McGOWAN, BRIAN	2	16612	1085 Case Cost	3113.75		3113.75	-7238.75
	Total for May 5/2004:			-3113.75								
Aug 3/2004	Cavanaugh & Associates, Inc.	6816	2556/MCGOWAN - R	02-2904	McGOWAN, BRIAN	2	16868	1085 Case Cost	4946.47		4946.47	-12460.22
	Total for Aug 3/2004:			-4946.47								
Aug 10/2004	Cavanaugh & Associates, Inc.	7796	Swan 2559 - R	03-3084	SWAN, ROSALIE	2	17193	1085 Case Cost	2050.00		2050.00	-17219.59
	Total for Aug 10/2004:			-2050.00								
Oct 5/2004	CAVANAUGH AND ASSOCIATES	9769	SWAN 2559 - R	03-3084	SWAN, ROSALIE	2	17549	1085 Case Cost	460.00		460.00	-18979.59
	Total for Oct 5/2004:			-460.00								
Dec 7/2004	CAVANAUGH AND ASSOCIATES	20910	SWAN 2559 - R	03-3084	SWAN, ROSALIE	2	17849	1085 Case Cost	1102.00		1102.00	-20081.59
	Total for Dec 7/2004:			-1102.00								
Dec 30/2004	CAVANAUGH AND ASSOCIATES	12873	JAKOWINICZ/02-2844			2	18017	1085 Case Cost	3500.00		3500.00	-23581.59
	Total for Dec 30/2004:			-3500.00								
Feb 4/2005	CAVANAUGH AND ASSOCIATES	20910	SWAN 2559 - R	03-3084	SWAN, ROSALIE	2	18051	1085 Case Cost	1102.00		1102.00	-20081.59
	Total for Feb 4/2005:			-1102.00								
May 5/2005	CAVANAUGH AND ASSOCIATES	19413	KENSINGER 2388			2	19043	1085 Case Cost	1906.94		1906.94	-31396.34
	Total for May 5/2005:			-1906.94								
May 23/2005	CAVANAUGH AND ASSOCIATES	20910	SWAN 2559 - R	03-3084	SWAN, ROSALIE	2	19051	1085 Case Cost	3500.00		3500.00	-34896.34
	Total for May 23/2005:			-3500.00								
Jun 7/2005	CAVANAUGH AND ASSOCIATES	20910	KENSINGER 2388 - 97=1850			2	19306	1085 Case Cost	3786.60		3786.60	-38682.94
	Total for Jun 7/2005:			-3786.60								
Sep 9/2005	CAVANAUGH AND ASSOCIATES	20910	NORPES/02-2844			2	19306	1085 Case Cost	193.75		193.75	-38682.94
	Total for Sep 9/2005:			-193.75								
Oct 11/2005	CAVANAUGH AND ASSOCIATES	26609	JAKOWINICZ/2608 - 02-2844 -			2	20364	1085 Case Cost	5486.25		5486.25	-44362.94
	Total for Oct 11/2005:			-5486.25								
Oct 12/2005	CAVANAUGH AND ASSOCIATES	20910	NORPES/02-2844			2	20500	1085 Case Cost	2983.29		2983.29	-47346.23
	Total for Oct 12/2005:			-2983.29								
Nov 3/2005	CAVANAUGH AND ASSOCIATES	27840	JACOWINICZ 02-2844 - R			2	20606	1085 Case Cost	621.25		621.25	-47967.48
	Total for Nov 3/2005:			-621.25								
Nov 8/2005	CAVANAUGH AND ASSOCIATES	27932	2556/MCGOWAN 02-2904 - R			2	20618	1085 Case Cost	218.50		218.50	-49515.98
	Total for Nov 8/2005:			-218.50								
Jan 6/2006	CAVANAUGH AND ASSOCIATES	32783	SHAW 05-4249 - R			2	21492	1085 Case Cost	650.00		650.00	-50165.98
	Total for Jan 6/2006:			-650.00								
Feb 17/2006	CAVANAUGH AND ASSOCIATES	32783	SHAW 05-4249 - R			2	21492	1085 Case Cost	3500.00		3500.00	-53665.98
	Total for Feb 17/2006:			-3500.00								
Mar 3/2006	CAVANAUGH AND ASSOCIATES	32783	Bodden 03-3082 - R			2	21658	1085 Case Cost	3950.00		3950.00	-57615.98
	Total for Mar 3/2006:			-3950.00								
Jun 7/2006	CAVANAUGH AND ASSOCIATES	38461	Bodden 03-3082 - R			2	22548	0002 Client D:	347.94		347.94	-57963.92
	Total for Jun 7/2006:			-347.94								
Jul 11/2006	CAVANAUGH AND ASSOCIATES	38461	Bodden 03-3082 - R			2	22849	0092 Client D:	3767.50		3767.50	-61731.42
	Total for Jul 11/2006:			-3767.50								
Aug 3/2006	CAVANAUGH AND ASSOCIATES	41479	Bodden 03-3082 - R			2	23109	0002 Client D:	1036.62		1036.62	-62768.04
	Total for Aug 3/2006:			-1036.62								
Sep 8/2006	CAVANAUGH AND ASSOCIATES	41479	Bodden 03-3082 - R			2	23127	0002 Client D:	2194.42		2194.42	-64962.46
	Total for Sep 8/2006:			-2194.42								
Jan 5/2007	Cavanaugh & Associates, Inc.	47996	Mulrenin 04-4024 - R	04-4024	MULRENIN, PATRI	2	24738	*	3800.00		3800.00	-68762.46
	Total for Jan 5/2007:			-3800.00								
Jan 9/2007	Cavanaugh & Associates, Inc.	49582	Shaw 05-4249 - R	05-4249	SHAW ERNTE	2	24773	*	1444.90		1444.90	-70207.36
	Total for Jan 9/2007:			-1444.90								
Feb 9/2007	Cavanaugh & Associates, Inc.	49582	2686 Shaw 05-4249 - R	05-4249	SHAW ERNTE	2	25148	*	0000.00		0000.00	

***. Bank Account Summary ***

Bank Account 2 - Heritage - Case Cost	Open Bal 0.00	Check Tot 107090.96	Rcpt Tot 0.00	Balance -107090.96
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*** G/L Account Summary ***

G/L Account		Debit	Credit
1038	- Heritage - Case Cost	0.00	107090.96
1085	- Case Cost Advances	57615.98	0.00
0002	- Client Disbursements	49474.98	0.00
Total:		107090.96	107090.96

REPORT SELECTIONS - General Bank Journal

Layout Template	Default
Requested by	ADMIN
Finished	Tuesday, November 27, 2007 at 03:46:44 PM
Ver	8.10b
Date Range	ALL DATES
Matters	All
Clients	All
Major Clients	All
Client Intro Lawyer	All
Responsible Lawyer	All
Assigned Lawyer	All
Type of Law	All
Select From	All
Account	Active, Inactive, Archived Matters
Check/Receipt #	2 - Heritage - Case Cost
G/L Account	All
Receipt/Disb	All G/L Accounts
Received From/Paid To	All
Sort by	Cavanaugh
Include Corrected Entries	Date
Include Daily totals	No
Totals Only	Yes
G/L Acct. Summary	No
Summary by Resp Lawyer	Yes
	No

EXHIBIT A

DEFINITIONS

1. As used herein, the word "documents" means any writing, graphic matter and/or other object and/or tangible thing whether written, printed, produced by hand, recorded, produced by photographic or made tangible by any other process and any electronic or computer data stored on a hard drive, server, disc, CD Rom or other storage device.

2. As used herein, the term "experts" means Terry Cordray; Rehabilitation Expertise LLC; Malcolm Cohen; Employment Research Corporation; and Raymond Duffany.

DOCUMENTS TO BE PRODUCED

1. Documents sufficient to show the total of all amounts paid by you (or any attorney in your firm) or by or on behalf of your clients to each of the experts for each year in the last five years (2003-2007), including, but not limited to all IRS Form 1099's issued by your firm with respect to each expert.

2. For each of the experts, documents sufficient to show each lawsuit in connection with which your firm (or any attorney in your firm) has retained or utilized any services of the expert during the last five years (2003-2007).

3. Documents sufficient to show all amounts (a) billed to and (b) paid by your firm to each of the experts in connection with work done on this case.

FLETCHER & SIPPEL
ATTORNEYS AT LAW
29 N. WACKER DR., STE. 920
CHICAGO, IL 60606-2632

HARRIS TRUST AND SAVINGS BANK
CHICAGO, IL 60605
22566770

7074

PAY TO THE
ORDER OF

Hoy & Farns

\$ 45.00

\$ 45.00 and 00/100

DOLLARS

Jane Fletcher

Seal
Purified
on back

MP

100707410710256610 48011082101

FLETCHER & SIPPEL, LLC / ATTORNEYS AT LAW

7074

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

PATRICK ECKER,) 08CV2913 TG
Plaintiff,) JUDGE GRADY
v.) MAGISTRATE JUDGE DENLOW
WISCONSIN CENTRAL, LTD.) No. 07-CV-371
Defendant.) Judge William C. Griesbach

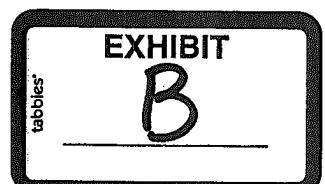
**OBJECTIONS BY JAMES L. FARINA, HOEY & FARINA, P.C. AND PLAINTIFF
PATRICK ECKER TO DEFENDANT'S SUBPOENA TO PLAINTIFF'S ATTORNEY**

Now come James L. Farina, Hoey & Farina and Plaintiff, Patrick Ecker, and for their objections to Defendant's Subpoena to Plaintiff's attorneys, James L. Farina and Hoey & Farina, P.C., state as follows:

1. Defendant, Wisconsin Central, Ltd. has caused to be served a subpoena on James L. Farina, and Hoey & Farina, P.C., counsel for Plaintiff, Patrick Ecker, requesting the following information:

1. Documents sufficient to show the total of all amounts paid by you (or any attorney in your firm) or by or on behalf of your clients to each of the experts for each year in the last five years (2003-2007), including, but not limited to all IRS Form 1099's issued by your firm with respect to each expert.
2. For each of the experts, documents sufficient to show each lawsuit in connection with which your firm (or any attorney in your firm) has retained or utilized any services of the expert during the last five years (2003 – 2007).
3. Documents sufficient to show all amounts (a) billed to and (b) paid by your firm to each of the experts in connection with work done on this case.

2. Serving Plaintiff's own attorney with a subpoena is so extraordinary that Plaintiff can find no case law which supports Defendant's actions in any civil action, prejudgment.



3. Plaintiff, Patrick Ecker, James L. Farina, and Hoey & Farina, object to the subpoena in that it necessarily converts Plaintiff's own attorneys into witnesses in this case. Explanation of records relating to payments made to the Plaintiff's expert witnesses in other cases would be necessary to explain methods of accounting that do not differentiate between expert witness fees, recoverable expenses, or expenses or fees for depositions subsequently repaid by Defendants.

4. The subpoena served on counsel for Plaintiff blurs the distinction between advocate and witness, a complication which is not necessary to because Rule 26(a)(2)(B) already requires experts to provide a list of cases where depositions or trial testimony has been given, and the fees charged for the experts' services. Accordingly, Plaintiff and counsel for Plaintiff believe the subpoena is completely inappropriate and objectionable, and seek an order quashing the subpoena, and providing any guidance this Honorable Court deems appropriate in this novel situation.

Respectfully submitted,

Patrick Ecker, Plaintiff

By: /s/James L. Farina
James L. Farina
Hoey & Farina
542 South Dearborn, Suite 200
Chicago, IL 60605
312/939-1212

CERTIFICATE OF SERVICE

James L. Farina, an attorney, certifies that he served a copy of the foregoing Objections by James L. Farina, Hoey & Farina, P.C. and Plaintiff, Patrick Ecker to Defendant's Subpoena to Plaintiff's Attorney upon the attorneys listed below by e-filing a copy with the United States District Court for the Eastern District of Wisconsin on April 4, 2008 and by U.S. Mail, from 542 South Dearborn Street, Chicago, IL.

James A. Fletcher
Kristin M. Liddle
Fletcher & Sippel, LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2875

/s/James L. Farina
James L. Farina

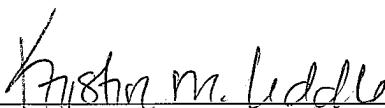
James L. Farina
HOEY & FARINA
542 S. Dearborn, Ste. 200
Chicago, IL 60605
(312) 939-1212

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PATRICK ECKER,)	08CV2913	TG
)	JUDGE GRADY	
)	MAGISTRATE JUDGE DENLOW	
Plaintiff,)		
)		
vs.)	Case No. 07-C-0371	
)	Pending in the Eastern District of Wisconsin	
WISCONSIN CENTRAL LTD.,)		
a corporation,)		
)		
Defendant.)		

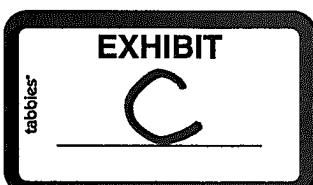
STATEMENT PURSUANT TO CIVIL L.R. 37.2

Kristin M. Liddle, one of the attorneys for defendant Wisconsin Central Ltd., states that on Friday, May 16, 2008 at approximately 5:46 p.m., she spoke by telephone with James L. Farina, counsel for plaintiff concerning the subject of this motion. They were unable to resolve differences, despite sincere attempts to do so.



Kristin M. Liddle
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, Illinois 60606-2832
Telephone: (312) 252-1500
Facsimile: (312) 252-2400

Attorneys for WISCONSIN CENTRAL LTD.



Nov 27/2007

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Page: 1

Date	Received From/Paid To	Entry #	Explanation	Matter	Client	ALL DATES Acct# G/L Acct	MAGISTRATE JUDGE DENLOW			
							Allocated Cheque	Receipt	Entry Tot	Running Bal
Apr 30/2004	Cavanaugh & Associates, Inc.	3558	Swan - R	03-3084	SWAN, ROSALIE	2 16057 1085 Case Cost	375.00		375.00	-375.00
			Total for Apr 30/2004:	-375.00						
May 5/2004	Cavanaugh & Associates, Inc.	3717	Retainer Swan - R	03-3084	SWAN, ROSALIE	2 16106 1085 Case Cost	3750.00		3750.00	-4125.00
			Total for May 5/2004:	-3750.00						
Jul 13/2004	Cavanaugh & Associates, Inc.	5889	BRIAN McGOWAN 2556 - R	02-2904	McGOWAN, BRIAN	2 16612 1085 Case Cost	3113.75		3113.75	-7238.75
			Total for Jul 13/2004:	-3113.75						
Aug 3/2004	Cavanaugh & Associates, Inc.	12511	2559/SWAN - R	03-3084	SWAN, ROSALIE	2 16798 1085 Case Cost	275.00		275.00	-7513.75
			Total for Aug 3/2004:	-275.00						
Aug 10/2004	Cavanaugh & Associates, Inc.	6816	2556/MCGOWAN - R	02-2904	McGOWAN, BRIAN	2 16868 1085 Case Cost	4946.47		4946.47	-12460.22
			Total for Aug 10/2004:	-4946.47						
Aug 12/2004	Cavanaugh & ASSOCIATES	16676	SWAN 2559 - R	03-3084	SWAN, ROSALIE	2 16989 1085 Case Cost	2709.37		2709.37	-15169.59
			Total for Aug 12/2004:	-2709.37						
Sep 16/2004	CAVANAUGH & ASSOCIATES	7795	Swan 2559 - R	03-3084	SWAN, ROSALIE	2 17193 1085 Case Cost	2050.00		2050.00	-17219.59
			Total for Sep 16/2004:	-2050.00						
Oct 5/2004	CAVANAUGH AND ASSOCIATES	85441	BRIAN MCGOWAN 2556 - R	02-2904	McGOWAN, BRIAN	2 17349 1085 Case Cost	1300.00		1300.00	-18519.59
			Total for Oct 5/2004:	-1300.00						
Nov 4/2004	CAVANAUGH AND ASSOCIATES	9769	SWAN 2559 - R	03-3084	SWAN, ROSALIE	2 17549 1085 Case Cost	460.00		460.00	-18979.59
			Total for Nov 4/2004:	-460.00						
Dec 7/2004	CAVANAUGH AND ASSOCIATES	14605	2559/SWAN - R	03-3084	SWAN, ROSALIE	2 17849 1085 Case Cost	1102.00		1102.00	-20081.59
			Total for Dec 7/2004:	-1102.00						
Dec 30/2004	CAVANAUGH AND ASSOCIATES	12873	JAKOWINICZ 02-2844			2 18017 1085 Case Cost	3500.00		3500.00	-23581.59
			Total for Dec 30/2004:	-3500.00						
Feb 4/2005	CAVANAUGH AND ASSOCIATES	15405	JAKOWINICZ 02-2844			2 18321 1085 Case Cost	5907.81		5907.81	-29489.40
			Total for Feb 4/2005:	-5907.81						
May 5/2005	CAVANAUGH AND ASSOCIATES	19413	KENSINGER 2388			2 19043 1085 Case Cost	1906.94		1906.94	-31396.34
			Total for May 5/2005:	-1906.94						
May 23/2005	CAVANAUGH AND ASSOCIATES	20155	NORRED 2686 - R			2 19176 1085 Case Cost	3500.00		3500.00	-34896.34
			Total for May 23/2005:	-3500.00						
Jun 7/2005	CAVANAUGH AND ASSOCIATES	20910	KENSINGER 2388 - 97=1850			2 19306 1085 Case Cost	3786.60		3786.60	-38682.94
			Total for Jun 7/2005:	-3786.60						
Sep 9/2005	CAVANAUGH AND ASSOCIATES	24976	NORRED 2686			2 20108 1085 Case Cost	193.75		193.75	-38876.69
			Total for Sep 9/2005:	-193.75						
Oct 11/2005	CAVANAUGH AND ASSOCIATES	26609	JAKOWINICZ/2608 - 02-2844			2 20364 1085 Case Cost	5486.25		5486.25	-44362.94
			Total for Oct 11/2005:	-5486.25						
Oct 12/2005	CAVANAUGH AND ASSOCIATES	26710	NORRED 2686/2612 - R			2 20390 1085 Case Cost	2983.29		2983.29	-47346.23
			Total for Oct 12/2005:	-2983.29						
Nov 3/2005	CAVANAUGH AND ASSOCIATES	27840	JACOWINITZ 02-2844 - R			2 20606 1085 Case Cost	621.25		621.25	-47967.48
			Total for Nov 3/2005:	-1951.25						
Nov 8/2005	CAVANAUGH AND ASSOCIATES	27843	NORRED 2686/2612 - R			2 20657 1085 Case Cost	1330.00		1330.00	-49297.48
			Total for Nov 8/2005:	-1951.25						
Feb 17/2006	CAVANAUGH AND ASSOCIATES	27932	2556/McGOWAN 02-2904 - R			2 20618 1085 Case Cost	218.50		218.50	-49515.98
			Total for Feb 17/2006:	-218.50						
Feb 20/2006	CAVANAUGH AND ASSOCIATES	30691	2556 MCGOWAN 02-2904 - R			2 21154 1085 Case Cost	650.00		650.00	-50165.98
			Total for Feb 20/2006:	-650.00						
Feb 17/2006	CAVANAUGH AND ASSOCIATES	32783	SHAW 05-4249 - R			2 21492 * 1085 Case Cost	3500.00		3500.00	-53665.98
			Total for Feb 17/2006:	-3500.00						
Mar 3/2006	CAVANAUGH AND ASSOCIATES	33579	Boden 03-3082 - R			2 21658 * 1085 Case Cost	3950.00		3950.00	-57615.98
			Total for Mar 3/2006:	-3950.00						
Jun 7/2006	CAVANAUGH AND ASSOCIATES	38461	Boden 03-3082 - R			2 22548 * 0002 Client D:	347.94		347.94	-57963.92
			Total for Jun 7/2006:	-347.94						
Jul 11/2006	CAVANAUGH AND ASSOCIATES	38988	Boden 03-3082 - R			2 22849 * 0002 Client D:	3767.50		3767.50	-61731.42
			Total for Jul 11/2006:	-3767.50						
Aug 3/2006	CAVANAUGH AND ASSOCIATES	41479	Boden 03-3082 - R			2 23109 * 0002 Client D:	1036.62		1036.62	-62768.04
			Total for Aug 3/2006:	-1036.62						
Sep 8/2006	CAVANAUGH AND ASSOCIATES	43128	Boden 03-3082 - R			2 23427 * 0002 Client D:	2194.42		2194.42	-64962.46
			Total for Sep 8/2006:	-2194.42						
Jan 5/2007	Cavanaugh & Associates, Inc.	47996	Mulrenin 04-4024 - R	04-4024	MULRENIN, PATRI	2 24738 * 0002 Client D:	3800.00		3800.00	-68762.46
			Total for Jan 5/2007:	-3800.00						
Jan 9/2007	Cavanaugh & Associates, Inc.	48092	Swan 2559 - 03-3084 - R	03-3084	SWAN, ROSALIE	2 24773 * 0002 Client D:	1444.90		1444.90	-70207.36
			Total for Jan 9/2007:	-1444.90						
Feb 9/2007	Cavanaugh & Associates, Inc.	49582	Shaw 05-4249 - R	05-4249	SHAW, ERNIE	2 25148 * 0002 Client D:	2992.50		2992.50	-73199.86

EXHIBIT D

tabbles

Date	Received From/Paid To	Matter	Client	Acct#	Che/Rec#/Clr/Btch	Allocated	Receipt	Entry Tot	Running Bal
	Entry #	Explanation		G/L Acct		Cheque			
	Total for Feb 9/2007:	-2992.50							
Apr 10/2007	Cavanaugh & Associates, Inc.								
51700	2599 Shaw 03-3084 - R	03-3084	SWAN, ROSALIE	0002	Client D:	2552.75		2552.75	-75752.61
	Total for Apr 10/2007:	-2552.75							
Apr 18/2007	Cavanaugh & Associates, Inc.								
51860	2692 Bodden 03-3082 - R	03-3082	BODDEN, THOMAS	2	25850 *			1812.78	-77565.39
	Total for Apr 18/2007:	-1812.78							
May 7/2007	Cavanaugh & Associates, Inc.								
52382	Bodden 03-3082 - R	03-3082	BODDEN, THOMAS	2	26027 *			4333.77	-81899.16
	Total for May 7/2007:	-4333.77							
May 9/2007	Cavanaugh & Associates, Inc.								
52509	2686 E. Shaw	05-4249	SHAW, ERNIE	2	26067 *			2100.00	-83999.16
	Total for May 9/2007:	-2100.00							
Jun 4/2007	Cavanaugh & Associates, Inc.								
53489	Bodden 2692 - R (Case Se)	03-3082	BODDEN, THOMAS	2	26316 *			2063.87	-86063.03
	Total for Jun 4/2007:	-2063.87							
Jun 8/2007	Cavanaugh & Associates, Inc.								
53534	Swan 03-3084 - #2559 - R	03-3084	SWAN, ROSALIE	2	26363 *			7048.74	-93111.77
	Total for Jun 8/2007:	-7048.74							
Jun 11/2007	Cavanaugh & Associates, Inc.								
53591	Mulrenin #2753 - 04-4024 - R	04-4024	MULRENIN, PATRI	2	26388 *			822.94	-93934.71
	Total for Jun 11/2007:	-822.94							
Jul 10/2007	Cavanaugh & Associates, Inc.								
54535	Swan 03-3084 - R	03-3084	SWAN, ROSALIE	2	26676 *			4805.94	-98740.65
	Total for Jul 10/2007:	-4805.94							
Jul 11/2007	Cavanaugh & Associates, Inc.								
54635	Mulrenin #2753 - 04-4024 - R/04-4024	04-4024	MULRENIN, PATRI	2	26706 *			722.00	-99462.65
	Total for Jul 11/2007:	-722.00							
Aug 9/2007	Cavanaugh & Associates, Inc.								
55577	Mulrenin #2753 - 04-4024 - R 04-4024	04-4024	MULRENIN, PATRI	2	27019 *			3238.31	-102700.96
	Total for Aug 9/2007:	-3238.31							
Oct 2/2007	Cavanaugh & Associates, Inc.								
57406	Jones 06-4309 - R	06-4309	Jones, Anthony	2	27580 *			3800.00	-106500.96
	Total for Oct 2/2007:	-3800.00							
Nov 6/2007	Cavanaugh & Associates, Inc.								
58943	Mulrenin 04-4024 - #2753 - 04-4024	04-4024	MULRENIN, PATRI	2	28008			590.00	-107090.96
	Total for Nov 6/2007:	-590.00							

*** Bank Account Summary ***

Bank Account	Open Bal	Check Tot	Rept Tot	Balance
2 - Heritage - Case Cost	0.00	107090.96	0.00	-107090.96

*** G/L Account Summary ***

G/L Account	Debit	Credit
1038 - Heritage - Case Cost	0.00	107090.96
1085 - Case Cost Advances	57615.98	0.00
0002 - Client Disbursements	49474.98	0.00
Total:	107090.96	107090.96

REPORT SELECTIONS - General Bank Journal

Layout Template Default
 Requested by ADMIN
 Finished Tuesday, November 27, 2007 at 03:46:44 PM
 Ver 8.10b
 Date Range ALL DATES
 Matters All
 Clients All
 Major Clients All
 Client Intro Lawyer All
 Responsible Lawyer All
 Assigned Lawyer All
 Type of Law All
 Select From Active, Inactive, Archived Matters
 Account 2 - Heritage - Case Cost
 Check/Receipt # All
 G/L Account All G/L Accounts
 Receipt/Disb All
 Received From/Paid To Cavanaugh
 Sort by Date
 Include Corrected Entries No
 Include Daily totals Yes
 Totals Only No
 G/L Acct. Summary Yes
 Summary by Resp Lawyer No